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644 South Figueroa Street  
5 Los Angeles, California 90017  
Telephone: (213) 217-5000  
6 Facsimile: (213) 217-5010

7 Attorneys for Plaintiff  
David Almeida

8  
9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 DAVID ALMEIDA, individually and  
12 on behalf of all others similarly  
13 situated,

14 Plaintiff,

15 vs.

16 GOOGLE, INC., a Delaware  
Corporation; and DOES 1 through 10,  
17 inclusive,

18 Defendants.

CASE NO. CV 08-02088 RMW  
HON. RONALD M. WHYTE

**DECLARATION OF MICHAEL V.  
STORTI IN SUPPORT OF REPLY  
MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
LEAVE TO FILE A FIRST  
AMENDED COMPLAINT AND TO  
SET NEW CASE MANAGEMENT  
CONFERENCE**

19 Hearing

20 Date: October 30, 2009

Time: 9:00 a.m.

21 Courtroom: 6

22 **DECLARATION OF MICHAEL V. STORTI**

23 I, Michael V. Storti, declare as follows:

24 1. I am over the age of 18 and a resident of California. I make this  
25 declaration of my personal and first-hand knowledge, and, if called and sworn as a  
26 witness, I would and could testify competently hereto.  
27  
28

**DECLARATION OF MICHAEL V. STORTI IN SUPPORT OF REPLY MEMORANDUM IN SUPPORT  
OF PLAINTIFF'S MOTION FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT (CV 08-02088  
RMW)**



**EXHIBIT A**

**Michael Storti**

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**From:** Michael Storti  
**Sent:** Tuesday, August 11, 2009 4:53 PM  
**To:** 'David Silbert'  
**Subject:** RE: Almeida v. Google  
**Attachments:** Stipulation (KBK edits).DOC

David,

Attached are plaintiff's revisions to the stipulation. Let me know if these are acceptable.

Thanks,

Michael Storti  
Kabateck Brown Kellner LLP  
644 South Figueroa Street  
Los Angeles, CA 90017  
(213) 217-5000 (main)  
(213) 217-5013 (direct)  
(213) 217-5010 (fax)  
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[ms@kbklawyers.com](mailto:ms@kbklawyers.com)

---

**From:** David Silbert [mailto:DSilbert@KVN.com]  
**Sent:** Monday, August 10, 2009 3:01 PM  
**To:** Michael Storti  
**Subject:** Almeida v. Google

Hi Michael:

Here's a revised proposed stipulation, which I think you'll be happy with. If so, you can sign for us and file. Give me a call if you'd like to discuss.

**David J. Silbert**  
Keker & Van Nest, LLP  
710 Sansome Street  
San Francisco, CA 94111  
(415) 391-5400  
[dsilbert@kvn.com](mailto:dsilbert@kvn.com)  
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10/13/2009

**EXHIBIT B**

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5 Los Angeles, California 90017  
Telephone: (213) 217-5000  
6 Facsimile: (213) 217-5010

7 Attorneys for Plaintiff  
8 and the Proposed Class

9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION  
13

14 DAVID ALMEIDA, individually and on  
behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 GOOGLE INC., a Delaware corporation; and  
18 DOES 1 through 10, inclusive,

19 Defendants.

Case No. C 08-02088 RMW

**STIPULATION OF VOLUNTARY  
DISMISSAL PURSUANT TO  
FED. R. CIV. P. 41(a)(1)**

Judge: Hon. Ronald M. Whyte

1 Through this Stipulation, and for the reasons set forth below, plaintiff David Almeida  
2 (“Plaintiff”) and defendant Google, Inc. (“Defendant”) stipulate to the dismissal, with prejudice,  
3 of Plaintiff’s claims against Defendant, pursuant to Federal Rule of Civil Procedure 41(a)(1):

4 WHEREAS, on or about April 22, 2008, Plaintiff commenced the above captioned action  
5 on behalf of himself and a putative class;

6 WHEREAS, on or about July 14, 2008, Defendant filed its answer;

7 ~~WHEREAS, the parties have determined that Plaintiff was never himself a member of the~~  
8 ~~class that he seeks to represent;~~

9 ~~WHEREAS, the parties agree that under *Lierboe v. State Farm Mutual Automobile*~~  
10 ~~*Insurance Co.*, 350 F.3d 1018, 1023 (9th Cir. 2003), the appropriate course under these~~  
11 ~~circumstances is dismissal of the action;~~

12 WHEREAS, Fed. R. Civ. P. 41(a)(1)(A)(ii) allows for voluntary dismissal without court  
13 order by a stipulation signed by all parties who have appeared; and

14 WHEREAS, the putative class has not been certified.

15 IT IS HEREBY STIPULATED AND AGREED that Plaintiff dismisses his claims  
16 against Defendant, with prejudice.

17 IT IS FURTHER STIPULATED AND AGREED that each party shall bear its own costs  
18 accrued or incurred in connection with the above captioned action.

19 Dated: August \_\_, 2009

KABATECK BROWN KELLNER LLP

20  
21  
22 By: \_\_\_\_\_  
23 Alfredo Torrijos  
Attorneys for Plaintiff

24 Dated: August \_\_, 2009

KEKER & VAN NEST, LLP

25  
26  
27 By: \_\_\_\_\_  
28 David J. Silbert  
Attorneys for Defendant

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**EXHIBIT C**

**Michael Storti**

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**From:** David Silbert [DSilbert@KVN.com]  
**Sent:** Thursday, August 13, 2009 9:52 AM  
**To:** Michael Storti  
**Subject:** FW: Almeida v. Google  
**Attachments:** Stipulation (KBK edits).DOC

Michael:

We agreed to waive costs, but we think the recitals need to stay in the stipulation. The attached version adds them back (and also deletes the erroneous comma in the first paragraph). If we can't agree on this, it's probably best that you file a motion, since we've been through several iterations at this point. I'm around today, so give me a call if you'd like to discuss.

Thanks.

---

**From:** Michael Storti [mailto:ms@kbklawyers.com]  
**Sent:** Tuesday, August 11, 2009 4:53 PM  
**To:** David Silbert  
**Subject:** RE: Almeida v. Google

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Thanks,

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so, you can sign for us and file. Give me a call if you'd like to discuss.

**David J. Silbert**

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